

1 **NOAS**

2 MARGARET A MCLEATCHIE, Nevada Bar No. 10931

3 ALINA M. SHELL, Nevada Bar No. 11711

4 **MCLEATCHIE SHELL LLC**

5 701 East Bridger Ave., Suite 520

6 Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Las Vegas Review-Journal

Electronically Filed
Apr 20 2018 02:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 **DISTRICT COURT**

8 **CLARK COUNTY NEVADA**

9 AMERICAN BROADCASTING
10 COMPANIES, INC.; THE ASSOCIATED
11 PRESS; CABLE NEWS NETWORK,
12 INC.; CHESAPEAKE MEDIA I, LLC,
13 D/B/A KSNV-TV; LOS ANGELES
14 TIMES COMMUNICATIONS, LLC; THE
15 NEW YORK TIMES COMPANY; AND
16 WP COMPANY LLC D/B/A THE
17 WASHINGTON POST,

18 Petitioners,

19 v.

20 LAS VEGAS METROPOLITAN POLICE
21 DEPARTMENT,

22 Respondent.

23 LAS VEGAS REVIEW-JOURNAL,

24 Petitioner,

25 v.

26 LAS VEGAS METROPOLITAN POLICE
27 DEPARTMENT,

28 Respondent.

Case No.: A-17-764030-W

Consolidated Case No.: A-17-764169-W

Dept. No.: XXIII

NOTICE OF CROSS-APPEAL

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///

NOTICE is hereby given that Petitioner, the Las Vegas Review-Journal (“Review-Journal”), pursuant to Nevada Rule of Appellate Procedure 4(a)(2), hereby timely cross-appeals to the Supreme Court of Nevada from the District Court’s March 2, 2018 Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. 239.011/Petition for Writ of Mandamus and the March 9, 2018 Order Regarding Public Records Request, both of which Respondent Las Vegas Metropolitan Police Department appealed on March 30, 2018.

DATED this the 13th day of April, 2018.

/s/ Margaret A. McLetchie

MARGARET A MCLETCHE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETCHE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Las Vegas Review-Journal

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13th day of April, 2018, pursuant to Administrative
3 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing NOTICE OF CROSS-
4 APPEAL in *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan Police*
5 *Department*, Clark County District Court Case No. A-17-764030-W, to be served
6 electronically using the Odyssey File & Serve electronic filing service system, to all parties
7 with an email address on record.

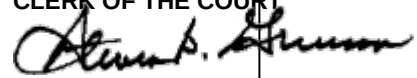
8 I hereby further certify that on the 13th day of April, 2018, pursuant to Nev. R. Civ.
9 P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing NOTICE OF CROSS-
10 APPEAL by depositing the same in the United States mail, first-class postage pre-paid, to
11 the following:

12 Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
13 **MARQUIS AURBACH COFFING**
14 10001 Park Run Drive
15 Las Vegas, NV 89145
16 Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
17 *Attorneys for Las Vegas Metropolitan Police Department*

18 Joel E. Tasca and Justin A. Shiroff
19 **BALLARD SPAHR LLP**
20 1980 Festival Plaza Drive, Suite 900
21 Las Vegas, NV 89135
22 Email: tasca@ballardspahr.com; shiroffj@ballardspahr.com
23 *Counsel for American Broadcasting Companies, Inc., The Associated Press,*
24 *Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a KSNV-TV, Los*
25 *Angeles Times Communications, LLC, The New York Times Company, and WP*
26 *Company LLC d/b/a The Washington Post*

27 This document applies to Case No. A-17-764030-W.

28 /s/ Pharan Burchfield
EMPLOYEE, McLetchie Shell LLC



1 **ASTA**
2 MARGARET A MCLETCHE, Nevada Bar No. 10931
3 ALINA M. SHELL, Nevada Bar No. 11711
4 **MCLETCHE SHELL LLC**
5 701 East Bridger Ave., Suite 520
6 Las Vegas, Nevada 89101
7 Telephone: (702) 728-5300; Fax: (702) 425-8220
8 Email: maggie@nvlitigation.com
9 Counsel for Las Vegas Review-Journal

7 **DISTRICT COURT**

8 **CLARK COUNTY NEVADA**

9 AMERICAN BROADCASTING
10 COMPANIES, INC.; THE ASSOCIATED
11 PRESS; CABLE NEWS NETWORK,
12 INC.; CHESAPEAKE MEDIA I, LLC,
13 D/B/A KSNV-TV; LOS ANGELES
14 TIMES COMMUNICATIONS, LLC; THE
15 NEW YORK TIMES COMPANY; AND
16 WP COMPANY LLC D/B/A THE
17 WASHINGTON POST,

18 Petitioners,

19 v.

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22 Respondent.

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26 LAS VEGAS METROPOLITAN POLICE
27 DEPARTMENT,

28 Respondent.

Case No.: A-17-764030-W
Consolidated Case No.: A-17-764169-W

Dept. No.: XXIII

CASE APPEAL STATEMENT

///

1. *Name of cross-appellant filing this case appeal statement:*

Petitioner Las Vegas Review-Journal.

2. *Identify the judge issuing the decision, judgment, or order appealed from:*

The Honorable Richard F. Scotti, District Court Judge.

3. *Identify each cross-appellant and the name and address of counsel for each appellant:*

MARGARET A. MCLETSHELL, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETSHELL SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

Counsel for Petitioner/Cross-Appellant Las Vegas Review-Journal

4. *Identify each cross-respondent and the name and address of appellate counsel, if known, for each cross-respondent:*

CRAIG R. ANDERSON, Nevada Bar No. 6882

NICK D. CROSBY, 8996

JACKIE V. NICHOLS, Nevada Bar No. 14246

MARQUIS AURBACH COFFING

10001 Park Run Drive

Las Vegas, NV 89145

Counsel for Appellant/Cross-Respondent Las Vegas Metropolitan Police Department

5. *Indicate whether any attorney identified above in 3 or 4 is not licensed to practice law in Nevada and, if so, whether the District Court granted that attorney permission to appear under SCR 42 (and attach a copy of any District Court order granting such permission):*

Not applicable. All attorneys are licensed in Nevada.

6. *Indicate whether appellant was represented by appointed or retained counsel in the District Court:*

Appellant is represented by retained counsel.

///

7. *Indicate whether appellant is represented by appointed or retained counsel on appeal:*

Retained counsel.

8. *Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date of entry of the District Court order granting such leave:*

No.

9. *Indicate the date the proceedings commenced in the District Court, e.g., the date the complaint, indictment, information, or petition was filed:*

The Petition for Writ of Mandamus in this action was filed on November 2, 2017.

10. *Provide a brief description of the nature of the action and result in the District Court, including the type of judgment or order being appealed and the relief granted by the District Court:*

This cross-appeal seeks review of two orders entered by the district court pertaining to a petition for writ of mandamus submitted pursuant to the Nevada Public Records Act (“NPRA”), Nev. Rev. Stat. § 239.011(2) after Appellant/Cross-Respondent the Las Vegas Metropolitan Police Department (“LVMPD”) declined to produce certain public records pertaining to the shooting which occurred on October 1, 2017 at the Route 91 Harvest Music Festival in Las Vegas, Nevada. On March 2, 2018, the district court entered and noticed an Order granting the petition, but permitting the LVMPD at least six months to produce records and redact certain information. In the order, the district court found that the NPRA required the Review-Journal and other petitioners to pay fees associated with the production of the requested records, and ordered the parties to submit supplement briefing regarding to amount to be charged with respect to the production of the records. On March 9, 2018, without holding an evidentiary hearing, the district court entered and noticed another order pertinent to the records request which properly denied some of the LVMPD’s request to charge fees for the production of some records, but permitted LVMPD to charge certain fees for the production of certain responsive public records, some of which are not permitted by law.

///

11. *Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding:*

This case has not been the subject of any prior case in the Nevada Supreme Court

12. *Indicate whether this appeal involves child custody or visitation:*

This appeal does not involve child custody or visitation.

13. *If this is a civil case, indicate whether this appeal involves the possibility of settlement:*

The Review-Journal does not believe this appeal involved the possibility of settlement, as the events of 1 October occurred over six months ago and the LVMPD has not produced a single responsive record.

DATED this the 13th day of April, 2018.

/s/ Margaret A. McLetchie

MARGARET A MCLETCHE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLETCHE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, Nevada 89101

Telephone: (702) 728-5300; Fax: (702) 425-8220

Email: maggie@nvlitigation.com

Counsel for Las Vegas Review-Journal

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 13th day of April, 2018, pursuant to Administrative
3 Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing CASE APPEAL
4 STATEMENT in *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan*
5 *Police Department*, Clark County District Court Case No. A-17-764030-W, to be served
6 electronically using the Odyssey File & Serve electronic filing service system, to all parties
7 with an email address on record.

8 I hereby further certify that on the 13th day of April, 2018, pursuant to Nev. R. Civ.
9 P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing CASE APPEAL
10 STATEMENT by depositing the same in the United States mail, first-class postage pre-paid,
11 to the following:

12 Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
13 MARQUIS AURBACH COFFING
14 10001 Park Run Drive
15 Las Vegas, NV 89145
16 Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
17 *Attorneys for Las Vegas Metropolitan Police Department*

18 Joel E. Tasca and Justin A. Shiroff
19 **BALLARD SPAHR LLP**
20 1980 Festival Plaza Drive, Suite 900
21 Las Vegas, NV 89135
22 Email: tasca@ballardspahr.com; shiroffj@ballardspahr.com
23 *Counsel for American Broadcasting Companies, Inc., The Associated Press,*
24 *Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a KSNV-TV, Los*
25 *Angeles Times Communications, LLC, The New York Times Company, and WP*
26 *Company LLC d/b/a The Washington Post*

27 This document applies to Case No. A-17-764030-W.

28 /s/ Pharan Burchfield
EMPLOYEE, McLetchie Shell LLC

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant
(s)

§
§
§
§
§
§

Location: **Department 23**
Judicial Officer: **Miley, Stefany**
Filed on: **11/02/2017**
Case Number History:
Cross-Reference Case **A764030**
Number:
Supreme Court No.: **75518**

CASE INFORMATION

Related Cases
A-17-764169-W (Consolidated)

Case Type: **Writ of Mandamus**
Case Flags: **Consolidated - Lead Case
Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-17-764030-W
Court	Department 23
Date Assigned	03/19/2018
Judicial Officer	Miley, Stefany

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	American Broadcasting Companies, Inc.	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
Defendant	Las Vegas Metropolitan Police Department	Anderson, Craig R. <i>Retained</i> 702-382-0711(W)
Petitioner	Associated Press	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
	Cable News Network, Inc.	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
	Chesapeake Media I, LLC	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
	Las Vegas Review-Journal	McLetchie, Margaret A. <i>Retained</i> 702-728-5300(W)
	Los Angeles Times Communications, LLC	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
	New York Times Company	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)
	WP Company LLC	Tasca, Joel E. <i>Retained</i> 702-471-7000(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

11/02/2017	 Petition for Writ of Mandamus Filed by: Plaintiff American Broadcasting Companies, Inc. <i>Public Records Act Application Pursuant to Nev. Rev. Stat. Sec.239.011/Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. Sec.239.011</i>
11/02/2017	 Initial Appearance Fee Disclosure Filed By: Petitioner Associated Press; Petitioner Cable News Network, Inc.; Petitioner Chesapeake Media I, LLC; Petitioner Los Angeles Times Communications, LLC; Petitioner New York Times Company; Petitioner WP Company LLC <i>Initial Appearance Fee Disclosure</i>
11/07/2017	 Motion to Consolidate Filed By: Petitioner Las Vegas Review-Journal <i>Motion to Consolidate</i>
11/08/2017	 Peremptory Challenge Filed by: Defendant Las Vegas Metropolitan Police Department <i>Peremptory Challenge of Judge</i>
11/08/2017	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
11/08/2017	 Amended Certificate of Service Party: Petitioner Las Vegas Review-Journal <i>Amended Certificate of Service</i>
11/15/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff American Broadcasting Companies, Inc. <i>Summons</i>
11/28/2017	 Amended Petition Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.011/Petition for Writ of Mandamus</i>
11/28/2017	 Notice of Entry of Order Filed By: Petitioner Las Vegas Review-Journal <i>Notice of Entry of Order</i>
12/01/2017	 Summons Filed by: Plaintiff American Broadcasting Companies, Inc. <i>Summons</i>
12/06/2017	 Amended Petition Filed By: Petitioner Las Vegas Review-Journal <i>Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
12/07/2017	 Stipulation and Order Filed by: Plaintiff American Broadcasting Companies, Inc. <i>Stipulation and order to (1) Amend Petition; and (2) to Set Briefing Schedule</i>
12/08/2017	 Petitioners Opening Brief Filed by: Petitioner Las Vegas Review-Journal

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

Opening Brief in Support of Amended Public Records Act Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus

12/11/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Notice of Entry of Stipulation and Order to (1) Amend Petition; and (2) To Set Briefing Schedule</i>
12/13/2017	 Motion to Consolidate (3:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Petitioner Las Vegas Review-Journal's Motion to Consolidate</i>
12/14/2017	 Media Request and Order <i>Media Request And Order Allowing Camera Access To Court Proceedings</i>
12/15/2017	 Joinder Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Joinder to Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.001/Petition for Writ of Mandamus</i>
12/18/2017	 Stipulation and Order <i>Stipulation and Order to Extend Set Briefing Schedule</i>
12/20/2017	 Notice of Change of Address Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Notice of Change of Address</i>
12/22/2017	 Notice of Entry of Stipulation and Order Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Notice of Entry of Stipulation and Order to Extend Set Briefing Schedule</i>
12/27/2017	 Minute Order (11:21 AM) (Judicial Officer: Scotti, Richard F.) <i>Minute Order Granting Petitioner Las Vegas Review-Journal's Motion to Consolidate</i>
12/28/2017	 Notice of Hearing <i>Notice of Hearing</i>
01/08/2018	 Opposition Filed By: Defendant Las Vegas Metropolitan Police Department <i>Respondent Las Vegas Metropolitan Police Department s Opposition to Petitioner Las Vegas Review Journal s Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001 / Petition for Writ of Mandamus (Expedited Matter Pursuant to Nev. Rev. Stat. 239.001)</i>
01/11/2018	 Order Granting Motion Filed By: Petitioner Las Vegas Review-Journal <i>Order Granting Motion to Consolidate with Case No. A-17-764169-W</i>
01/11/2018	 Notice of Entry of Order Filed By: Petitioner Las Vegas Review-Journal <i>Notice of Entry of Order Granting Motion to Consolidate with Case No. A-17-764169-W</i>
01/16/2018	 Opposition Filed By: Defendant Las Vegas Metropolitan Police Department <i>Respondent Las Vegas Metropolitan Police Department s Opposition to Petitioner Las Vegas Review Journal s Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001 / Petition for Writ of Mandamus (Expedited Matter Pursuant to Nev. Rev. Stat. 239.001)</i>

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

01/22/2018	 Reply Filed by: Petitioner Las Vegas Review-Journal <i>Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
01/22/2018	 Exhibits Filed By: Petitioner Las Vegas Review-Journal <i>Appendix of Exhibits to Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
01/23/2018	 Exhibits Filed By: Petitioner Las Vegas Review-Journal <i>Exhibit 11 to Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to Its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011</i>
01/31/2018	 Reply in Support Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Reply in Further Support of Joinder to Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.001/Petition for Writ of Mandamus</i>
02/07/2018	CANCELED Hearing (3:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Vacated - Duplicate Entry</i>
02/07/2018	 Hearing (9:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Amended Petition</i>
02/13/2018	 Media Request and Order <i>Media Request And Order Allowing Camera Access To Court Proceedings</i>
02/13/2018	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Amended Petition</i>
02/14/2018	 Supplement Filed by: Petitioner Las Vegas Review-Journal <i>Supplemental Brief Regarding Costs</i>
02/14/2018	 Brief Filed By: Defendant Las Vegas Metropolitan Police Department <i>Las Vegas Metropolitan Police Department's Brief Regarding Fees Permitted to be Charged in Responding to Public Records Requests</i>
02/15/2018	 Joinder Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Joinder to Supplemental Brief Regarding Costs</i>
03/02/2018	 Order Granting Filed By: Defendant Las Vegas Metropolitan Police Department <i>Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. 239.011/Petition for Writ of Mandamus</i>
03/02/2018	

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

	 Notice of Entry of Order Filed By: Defendant Las Vegas Metropolitan Police Department <i>Notice of Entry of Order</i>
03/07/2018	 Status Check (9:00 AM) (Judicial Officer: Miley, Stefany) 03/07/2018, 05/08/2018 <i>Status Check: Documents Provided</i>
03/09/2018	 Order <i>Order</i>
03/12/2018	 Minute Order (3:00 AM) (Judicial Officer: Scotti, Richard F.)
03/16/2018	 Minute Order (3:00 AM) (Judicial Officer: Scotti, Richard F.)
03/16/2018	 Notice Filed By: Petitioner Las Vegas Review-Journal <i>Notice Regarding Disqualification</i>
03/16/2018	 Notice Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Notice Concerning Court's March 12, 2018 Minute Order</i>
03/16/2018	 Motion to Reconsider Filed By: Defendant Las Vegas Metropolitan Police Department <i>Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration</i>
03/19/2018	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
03/20/2018	 Notice of Hearing <i>Notice of Hearing</i>
03/22/2018	 Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Status Check Re: Briefing Schedule of LVMPD Motion for Reconsideration and Request for Stay</i>
03/22/2018	 Stipulation and Order Filed by: Petitioner Las Vegas Review-Journal <i>Stipulation and Order Extending Deadline to File Petitioner's Motion for Attorney's Fees and Costs</i>
03/22/2018	 Notice of Entry of Stipulation and Order Filed By: Petitioner Las Vegas Review-Journal <i>Notice of Entry of Stipulation and Order</i>
03/30/2018	 Notice of Appeal Filed By: Defendant Las Vegas Metropolitan Police Department <i>Respondent Las Vegas Metropolitan Police Department's Notice of Appeal</i>
03/30/2018	 Case Appeal Statement Filed By: Defendant Las Vegas Metropolitan Police Department

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement

04/03/2018	 Motion to Stay Filed By: Defendant Las Vegas Metropolitan Police Department <i>Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time</i>
04/04/2018	 Opposition to Motion Filed By: Plaintiff American Broadcasting Companies, Inc. <i>Joint Opposition to Motion for Reconsideration and Stay Pending Reconsideration</i>
04/04/2018	 Certificate of Service Filed by: Plaintiff American Broadcasting Companies, Inc. <i>Certificate of Service (Corrected) Re: Joint Opposition to Motion for Reconsideration and Stay Pending Reconsideration</i>
04/09/2018	 Opposition to Motion Filed By: Plaintiff American Broadcasting Companies, Inc.; Petitioner Associated Press; Petitioner Cable News Network, Inc.; Petitioner Chesapeake Media I, LLC; Petitioner Los Angeles Times Communications, LLC; Petitioner New York Times Company; Petitioner WP Company LLC; Petitioner Las Vegas Review-Journal <i>Joint Opposition to Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time</i>
04/10/2018	 Motion For Stay (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time</i>
04/13/2018	 Order Filed By: Defendant Las Vegas Metropolitan Police Department <i>Order</i>
04/13/2018	 Notice of Appeal Filed By: Petitioner Las Vegas Review-Journal <i>Notice of Cross-Appeal</i>
04/13/2018	 Case Appeal Statement Filed By: Petitioner Las Vegas Review-Journal <i>Case Appeal Statement</i>
04/16/2018	 Notice of Entry of Order Filed By: Defendant Las Vegas Metropolitan Police Department <i>Notice of Entry of Order</i>
04/27/2018	CANCELED Motion For Reconsideration (10:00 AM) (Judicial Officer: Scotti, Richard F.) <i>Vacated - Moot</i> <i>Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration</i>
04/27/2018	CANCELED Hearing (10:00 AM) (Judicial Officer: Miley, Stefany) <i>Vacated - Moot</i> <i>Hearing: Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration</i>
05/08/2018	CANCELED Status Check (9:30 AM) (Judicial Officer: Scotti, Richard F.) <i>Vacated</i>

DATE

FINANCIAL INFORMATION

DEPARTMENT 23
CASE SUMMARY
CASE NO. A-17-764030-W

Defendant Las Vegas Metropolitan Police Department

Total Charges 474.00

Total Payments and Credits 474.00

Balance Due as of 4/18/2018 0.00

Petitioner Las Vegas Review-Journal

Total Charges 24.00

Total Payments and Credits 24.00

Balance Due as of 4/18/2018 0.00

Plaintiff American Broadcasting Companies, Inc.

Total Charges 494.50

Total Payments and Credits 494.50

Balance Due as of 4/18/2018 0.00

DISTRICT COURT CIVIL COVER SHEET

Department 24

CLARK

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): American Broadcasting Companies, Inc., The Associated Press; Cable News Network, Inc., Chesapeake Media I, LLC, dba KSNV-TV; Los Angeles Times Communications, LLC, The New York Times Company, and WP Company dba The Washington Post	Defendant(s) (name/address/phone): Las Vegas Metropolitan Police Department
Attorney (name/address/phone): Joel E. Tasca, Esq., Justin A. Shiroff, Esq. Ballard Spahr LLP, 100 N. City Parkway, Suite 1750 Las Vegas, NV 89106 (702) 471-7000	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property Landlord/Tenant ☐ Unlawful Detainer ☐ Other Landlord/Tenant Title to Property ☐ Judicial Foreclosure ☐ Other Title to Property Other Real Property ☐ Condemnation/Eminent Domain ☐ Other Real Property	Negligence ☐ Auto ☐ Premises Liability ☐ Other Negligence Malpractice ☐ Medical/Dental ☐ Legal ☐ Accounting ☐ Other Malpractice	Torts Other Torts ☐ Product Liability ☐ Intentional Misconduct ☐ Employment Tort ☐ Insurance Tort ☐ Other Tort
Probate Probate (select case type and estate value) ☐ Summary Administration ☐ General Administration ☐ Special Administration ☐ Set Aside ☐ Trust/Conservatorship ☐ Other Probate Estate Value ☐ Over \$200,000 ☐ Between \$100,000 and \$200,000 ☐ Under \$100,000 or Unknown ☐ Under \$2,500	Construction Defect & Contract Construction Defect ☐ Chapter 40 ☐ Other Construction Defect Contract Case ☐ Uniform Commercial Code ☐ Building and Construction ☐ Insurance Carrier ☐ Commercial Instrument ☐ Collection of Accounts ☐ Employment Contract ☐ Other Contract	Judicial Review/Appeal Judicial Review ☐ Foreclosure Mediation Case ☐ Petition to Seal Records ☐ Mental Competency Nevada State Agency Appeal ☐ Department of Motor Vehicle ☐ Worker's Compensation ☐ Other Nevada State Agency Appeal Other ☐ Appeal from Lower Court ☐ Other Judicial Review/Appeal
Civil Writ Civil Writ ☐ Writ of Habeas Corpus ☒ Writ of Mandamus ☐ Writ of Quo Warrant ☐ Writ of Prohibition ☐ Other Civil Writ		Other Civil Filing Other Civil Filing ☐ Compromise of Minor's Claim ☐ Foreign Judgment ☐ Other Civil Matters

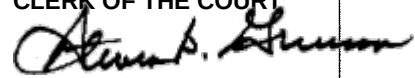
Business Court filings should be filed using the Business Court civil coversheet.

11/1/17

Date


 Signature of initiating party or representative

See other side for family-related case filings.



Marquis Aurbach Coffing
Craig R. Anderson, Esq.
Nevada Bar No. 6882
Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
canderson@maclaw.com
ncrosby@maclaw.com
jnichols@maclaw.com
Attorneys for Respondent Las Vegas
Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

**ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS
PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

This matter came before the Court on Petitioners American Broadcasting Companies, Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 “Petitioners”) Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the “Petitions”).

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal’s Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition’s Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department (“Metro”). Based on the Court’s careful review of
15 the parties’ briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the “Act”) is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.
- 28

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

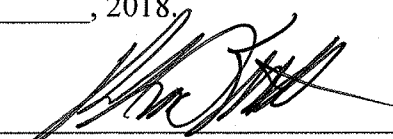
16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

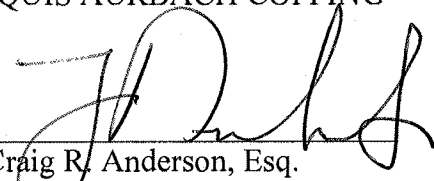
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully Submitted By: 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

14 Nevada Bar No. 6882

15 Nick D. Crosby, Esq.

16 Nevada Bar No. 8996

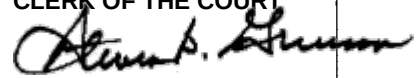
17 Jackie V. Nichols, Esq.

18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department
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Marquis Aurbach Coffing
Craig R. Anderson, Esq.
Nevada Bar No. 6882
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canderson@maclaw.com
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jnichols@maclaw.com
Attorneys for Respondent Las Vegas
Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

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1 PLEASE TAKE NOTICE that an Order Granting Amended Public Records Act
2 Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus was entered
3 on the 2nd day of March, 2018, a copy of which is attached hereto.

4 Dated this 2nd day of March, 2018.

5
6 MARQUIS AURBACH COFFING

7
8 By: /s/ Jackie V. Nichols
9 Craig R. Anderson, Esq.
10 Nevada Bar No. 6882
11 Nick D. Crosby, Esq.
12 Nevada Bar No. 8996
13 Jackie V. Nichols, Esq.
14 Nevada Bar No. 14246
15 10001 Park Run Drive
16 Las Vegas, Nevada 89145
17 Attorneys for Respondent Las Vegas
18 Metropolitan Police Department
19
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28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Joel E. Tasca, Esq.
Justin A. Shiroff, Esq.
Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
LVCTIntake@ballardspahr.com
shrioffj@ballardspahr.com
tasca@ballardspahr.com
lvdocket@ballardspahr.com
Attorneys for Petitioners

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
McLetchie Shell LLC
701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101
maggie@nvlitigation.com
alina@nvlitigation.com
Attorneys for Petitioner Las Vegas Review-
Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



Marquis Aurbach Coffing

Craig R. Anderson, Esq.

Nevada Bar No. 6882

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canderson@maclaw.com

ncrosby@maclaw.com

jnichols@maclaw.com

Attorneys for Respondent Las Vegas

Metropolitan Police Department

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CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
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16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
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1 5. Furthermore, they provide the press with the tools that assist the public in holding
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9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
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17 11. The Court finds that there was no implied, express, or statutory waiver due to
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19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
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22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

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28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

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2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
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6 withholding.

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10 would impede the investigation.

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12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

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15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

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22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

26. The Court further concludes that the strong public interest in favor of disclosure, together with the strong presumption in favor of production, outweighs any governmental interest in withholding the public records.

27. The Court finds that the public records sought include: 911 calls, body camera data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports, search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and information on any weapons obtained during the investigation into the October 1 Massacre.

Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing public records responsive to the public records request at issue in the Petitions;

IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a rolling basis, as public records are appropriately redacted and available for disclosure, without unnecessary delay;

IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith in producing the public records on a timely basis;

IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public record that may be highly confidential or where redactions may not be practicable, Metro shall meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this right to potentially seek a protective order is to be used very sparingly;

IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not to be used to withhold entire groups of public records;

IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a protective order shall not cause any delay in the production of all other requested public records;

IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in 30 days to review a report, to be given by the Parties, covering what has and has not been produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
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11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

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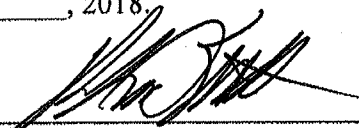
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1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

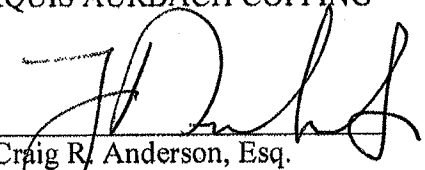
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
DISTRICT COURT JUDGE

8 Respectfully Submitted By:
9 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

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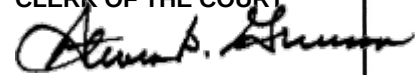
17 Jackie V. Nichols, Esq.

18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department
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23
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26
27
28



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 AMERICAN BROADCASTING COMPANIES,
INC., et al.,

7 Plaintiffs,

8 vs.

9 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

10 Defendants.
11

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

12
13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 **II. PURPOSE OF THE PUBLIC RECORDS ACT**

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*. 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature hereby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to “ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities.” *DR Partners v. Board of County*
4 *Com’rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) (“The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed.”). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) (“[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.”).

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media’s efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES’ DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media’s request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 ...

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND** 13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRC 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the “COPY COSTS” if the
3 project required the government entity to incur “extraordinary” use of personnel and
4 technological resources. It says: “[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use.” The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its “COPY COSTS,” plus its “PRE-COPY PREPARATIONS,” not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media’s request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the “50 cent” rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners’ request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners’ request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners’
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners’ request might interfere with Metro’s ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media’s request will
19 involve “extraordinary use,” and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur “extraordinary use” of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic “COPY COSTS” are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media’s
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro’s
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. “GEOGRAPHIC INFORMATION SERVICES” RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the “pre-copy
4 preparations.” This exception applies to data that is part of a “geographic information
5 systems.” A “geographic information system” is “a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed.” Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. “FEE FOR PROVIDING” RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a “per page” basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 **VII. SUMMARY OF FEES ALLOWED**

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

9 **Evidence Logs, and Interview Reports:** COPY COSTS of 31 cents per page, plus an
10 additional 50 cents for extraordinary services, for a total of 81 cents.

11 **Body Cams, and 911 Calls:** COPY COSTS – meaning only the actual
12 costs to reproduce the records onto the
13 medium for transfer, and the cost of such
medium (such as DVD, CD, flash drive, hard
drive, etc.).

14 **Dispatch Logs:** PRE-COPY PREPARATIONS, meaning
15 actual cost to gather, discuss, supervise and
16 insure quality control, as part of the effort to
comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 . . .

26 . . .

27 . . .

28

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6
7 

8 RICHARD F. SCOTTI
9 DISTRICT COURT JUDGE

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

15 Joel E. Tasca, Esq.
16 Justin A. Shiroff, Esq.
17 **BALLARD SPAHR**
Counsel for Petitioner

18 Margaret A. McLetchie, Esq.
19 Aline M. Shell, Esq.
MCLETCHIE SHELL LLC
Counsel for Petitioner LVRJ

20 Craig R. Anderson, Esq.
21 Nick D. Crosby, Esq.
22 Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
Counsel for Respondent LVMPD

23
24 /s/ Melody Howard

25 _____
26 Melody Howard
27 Judicial Executive Assistant
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 13, 2017

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

**December 13, 2017 3:00 AM Motion to Consolidate Petitioner Las Vegas
Review-Journal's
Motion to
Consolidate**

HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: April Watkins

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court will issue an Order resolving this Motion.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File & serve. aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

December 27, 2017

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

December 27, 2017	11:21 AM	Minute Order	Minute Order Granting Petitioner Las Vegas Review- Journal's Motion to Consolidate
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HEARD BY: Scotti, Richard F.

COURTROOM: Chambers

COURT CLERK: April Watkins

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Petitioner Las Vegas Review-Journal s Motion to Consolidate came before this Court on its December 13, 2017 Chamber Calendar. There being no opposition, pursuant to EDCR 2.20 and NRCP 42 the Motion is hereby GRANTED.

Las Vegas Review-Journal is directed to submit a proposed order consistent with the foregoing within ten (10) days and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such order should set forth a synopsis of the circumstances and authority justifying the requested relief.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, April Watkins, to all registered parties for Odyssey File & serve. aw

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

February 07, 2018

A-17-764030-W	American Broadcasting Companies, Inc., Plaintiff(s)
	vs.
	Las Vegas Metropolitan Police Department, Defendant(s)

February 07, 2018 9:00 AM Hearing

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kory Schlitz

RECORDER: Dalayne Easley

REPORTER:

PARTIES

PRESENT:	Crosby, Nick D	Attorney
	McLetchie, Margaret A.	Attorney
	Nichols, Jacqueline	Attorney
	Tasca, Joel E.	Attorney

JOURNAL ENTRIES

- Ms. McLetchie argued in support of the Amended Petition stating there are no more charges contemplated and there are no other suspects and requested the documents be transparent and provided, stating the public has the right to access the documents and access the facts. Mr. Crosby argued against the Petition stated the Department does not dispute NRS 239, and that public records are to be public however, this case is about when the timing of the records can and should be disclosed. Mr. Crosby argued the Police Department received the request for documents within 12 hours of the tragic event happening and they initially did not have time to respond. Upon Court's inquiry, Mr. Crosby stated there is still an active investigation and even though criminal charges are not going to be brought against Stephen Paddock it is still an active open case with the Police Department.

Court advised Metro Officers and all other public safety officers, must be praised for their courage, bravery, and resourcefulness in protecting the public and conducting its investigations, however, this Petition is not about the conduct of Metro. Court stated this Petition is about public access to public records so that the purposes of the First Amendment may be achieved. Court indicated Plaintiff

demands that Las Vegas Metropolitan Police Department produce several categories of documents on the grounds such documents are public records. The records requested by the Plaintiff are: 911 Calls, body camera data and dash cameras, CCTV videos, evidence logs, interview reports and dispatch information, search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and information on weapons obtained. COURT ORDERED, they will ADAPT the ruling by Judge Caddish with respect to any disclosures of warrant material.

Court advised Defendants have not expressly denied that these records are public records under NRS Chapter 239. Competing positions, Metro has opposed production of the requested records on the grounds that they are protected due to personal privacy, confidentiality, or ongoing investigations. Court advised the Nevada Public Records Act is codified in NRS Chapter 239 and the act provides that public records must be made available to the public for inspection or copying and the purpose of this act is to foster democratic principles by providing members of the public with access to inspect and copy public records to the extent permitted under Nevada law. The Nevada Public Records Act and the First Amendment to the Constitution, provides the press with the ability to obtain and publish information about issues that affect the public interest, the conduct of government officials, further provides the press with the tools to insure that the government is responsible and efficient. Furthermore, the First Amendment provides the press with the tools that assist the public in holding its Government accountable. Court advised the Government records are presumed to be public records and any restriction to the public's right of access to public records must be narrowly applied. The Government

bears a heavy burden in preventing disclosure of public records and must satisfy a two part test. First the Government must establish, by a preponderance of the evidence that the records are confidential, second, the Government must prove that its interest in non-disclosure outweighs the public's interest in access. In doing this balancing, the Court understands there is a presumption of public access, also in doing this balancing test the Court is mindful that the timing of the request is entitled to some weight.

Before the Court reaches the merits of the petition, the Court must address the issue of waiver asserted by the Plaintiffs, and they contend that Metro waived its right to withhold any records, because Metro failed to timely respond to the records request, within five days, or failed to provide the grounds for withholding specific records with specific reason. The Court rejects the Plaintiff's waiver argument and extraordinary circumstances here made it difficult to Metro to respond sooner. Court stated Metro did act promptly and Plaintiff's sought massive quantities of documents. Several different entities sought different groups of documents, and Plaintiff's requests would have required an incredible amount of time and resources while Metro was deeply involved in its investigation, and under these circumstances there was no implied, or express, or statutory waiver due to the government's pre-petition conduct.

Court advised if the Government contends that the requested records were confidential, or otherwise protected from disclosure, then the Government had a duty to redact confidential information and produce the non-confidential portions of the records. Wholesale withholding of documents with a general claim of confidentiality suggests to this Court that they records have not been sufficiently

scrutinized. A blanket protection over all categories of documents is improper, a failure to redact and produce does not necessarily waive the Government's rights, but it is certainly some evidence that exists that many records are no confidential.

The Government had duty to prove by a preponderance of the evidence, that each public record or part thereof is confidential and the Court finds that the Government failed to meet this burden. The Defendants contend that the pending criminal investigation creates a strong Government interest against disclosure, which outweighs any public interest and this Court disagrees with that argument. First, there exists on rule that records can be withheld merely because they relate to an ongoing investigation, and the Government still has the duty to show that the records of the ongoing investigation are confidential. Defendant has already produced the Preliminary Report which discusses and details the investigation. The Preliminary Report relies upon numerous public records generated in the course of the investigation. The entire universe of these investigative records cannot be so sensitive to bar wholesale withholding. Additionally, the Sheriff has publicly declared that the only suspect was Stephen Paddock, who is deceased. Court advised the Sheriff has also stated that it is the responsibility of the Government to ensure timely disclosure; however, Metro has not specifically explained how the document production would impeded the investigation. To the extent that disclosure might have some detrimental impact on the investigation, that impact is outweighed by the public interest. The public has the right to know the matter in which its Government officials are carrying out their public safety responsibilities.

Court advised the Defendant has withheld records on the grounds that they interfere with personal privacy and the Court rejects this argument. Court stated the rights to personal privacy can be protected by redactions, and any record subject to production can be redacted by Metro, to block names of individuals (other than Government officials), and also block addresses, phone numbers, social security numbers, descriptions on the individuals, and social media data for all individuals. Defendant contends that the horrifying 911 calls may be traumatic to close family members who hear the voices of their loved one facing imminent death, or expressing fear and panic if such persons was actually killed. This argument is speculative. Metro has not identified a single instance where a 911 caller was shot, to the extent there is any such interest Metro can prepare and should have prepared a privilege log for further review. The Court anticipates such instances are certainly rare. Court advised Metro has requested an in camera review, and the Court believes the time has passed for the Defendants to assert any valid objections to productions, moreover, the Government engaged in wholesale withholding of records with insufficient specific of reasons to withhold.

Court advised Defendant have failed to prove by a preponderance of the evidence, failed to prove by a preponderance of the evidence, that any of requested records are confidential. The strong public interest in disclosure, together with the strong presumption in favor of production, outweighs any governmental interest, and Metro may redact information regarding individuals as the Court has indicated. Court advised during the process of compiling the Defendants records to produce, if Defendant comes across any individual highly confidential record, then the Court will require parities met and confer with the Plaintiff in attempt to resolve the issue. This right to see a protective order must be used very sparingly, and must not be used to withhold entire groups of documents.

The filing of any motion for protective order must not cause any delay in the production of all other requested documents and COURT ORDERED, Petition GRANTED. Court advised they are inclined to grant the Defendant THIRTY (30) days to produce and compile the records.

Ms. McLetchie requested the records be produced on rolling basis as they are redacted and reviewed so delays, and they do not receive them in one lump in thirty days. Mr. Crosby stated he does not have an objection with the Court announcing its order, or a rolling disclosure, however stated he does not foresee Metro being able to produce and redact all the documents within a thirty day period. Mr. Crosby stated Metro can start producing redacted documents, and requested an opportunity to consult with his client to obtain a better time frame of how soon all of the documents can be produced. COURT ORDERED, rolling disclosure of documents; status conference SET in thirty days. Court directed Mr. Crosby to produce a report on what has and has not been produced within thirty days, and will allow parties an opportunity to explain whether there has been good faith communication regarding the productions and will entertain any objections with respect to the delay in reporting or the need for more time.

Ms. McLetchie requested Metro be specially directed to produce the documents as soon as possible. COURT advised the timely and expedite production of the records was already stated in its ruling, however, the Court does direct Metro to exercise utmost good faith in producing the documents in good faith. Ms. Crosby stated he has spoken with his client regarding the amount of documents being requested. Ms. McLetchie requested clarification on what the Court considers identifying information. COURT advised the names of the officer who were involved in the incident or the investigation can be properly disclosed, with regards to the individual, redact anyone who was interviewed, appears on CCTV videos, made a 911 call, any individual that is shown in body camera footage, to the extent that any of those documents identify the names or descriptions of the individual or any other personal information, COURT ORDERED REDACTED. Court further stated 911 calls to be produced in its entirety with the extent that the individual on the time identifies him or herself, which is ORDERED redacted.

COURT ORDERED, if Defendants come across a video that is deemed impossible to redact the individual information to the extent that members of the public are not revealed or disclosed, then the document can be viewed by Plaintiff at Metro offices.

Mr. Crosby noted that NRS 239.052(1) permits a fee for a government entity to charge, and a secondary second for extraordinary records to produce. Court advised the Defendant will have to pay with accordance to NRS 23, and the payment obligation will not be waived. Ms. McLetchie argued there is disagreements between parties regarding the charges. Mr. Crosby stated the excessive amount of documents that need to be redacted means a Government employee is taken away from their originally assigned job. Court advised parties can brief the matter, and submit to the Court by 2/14/18 and the Court will issue a Minute Order with respect to the charges Metro is requesting.

3/7/18 9:00 A.M. STATUS CHECK: DOCUMENTS PROVIDED

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****March 07, 2018**

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
 vs.
 Las Vegas Metropolitan Police Department, Defendant(s)

March 07, 2018 9:00 AM Status Check

HEARD BY: Scotti, Richard F. **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kory Schlitz

RECORDER: Dalyne Easley

REPORTER:

PARTIES

PRESENT: McLetchie, Margaret A. Attorney
 Nichols, Jacqueline Attorney
 Tasca, Joel E. Attorney

JOURNAL ENTRIES

- Ms. Nichols argued the statute that addresses fee is ambiguous, and noted within NRS 239.055(1) the statute is in conflict with itself and there is nothing that defines extraordinary use of personnel. Ms. Nichols argued the Department is allowed to charge for the copies of the documents, however they are disputing that the Department is permitted to charge for staffing time under NRS 239.055. Ms. McLetchie argued she believes her request for the documents does not fall within the extraordinary use statute and argued you cannot charge an extraordinary use fee for inspection of the document. Ms. McLetchie further argued a government entity is not entitled to charge for redaction. Ms. McLetchie stated Metro has not complied with the Court's recent order and has not turned over any documents. Ms. Nichols argued the Court's Order was entered on Friday March 2, and Metro has only had two full business days to comply with the Order. Ms. Nichols further argued the Department has appeal rights, and they did not mature until the Order was entered into. Ms. McLetchie argued even though Metro has appeal rights, does not mean they should not have started on working to produce the documents, and timely request a stay.

COURT notes access to public records are key to democracy public records are the people's business paid by the tax payers dollars. The media usually seeks public records on behalf of the public, so its

critical that records be made available at a reasonable price without interfering with essential Government services. The Public Records Act promotes Government transparency. The Government is not allowed to charge exorbitant prices as a revenue stream. The Government is not allowed to ignore records request cause they do not want to hassle with the process; and the Government may not avoid its production responsibilities cause it wants to avoid something that might be embarrassing. The Government entities's that charge exorbitant fees before as their actual costs do not serve the public. The Court is not conveying that Metro has any improper motive, or avoiding its responsibilities, or convey the fees they are trying to charge are exorbitant. Court stated Metro is seeking almost half a million dollars, and the Court needs to consider whether that request is legitimate. The Court also needs to consider whether the massive document request that the Petitioner's have put on Metro in this case, will compromise Metro's ability to protect the health, safety and welfare of the public. For these reasons the Court is going to accept the suggestion of the Petitioner and take this matter under advisement and determine whether the statute is ambiguous; whether the project involves extraordinary use of services and personnel; and to determine if the case cited by Ms. McLetchie applies; and for the Court to determine if an Evidentiary Hearing is required. COURT ORDERED, matter TAKEN UNDER ADVISEMENT and indicated an Order will be issued by noon on Friday. Mr. Tasca requested another Status Check hearing be set, since the purpose of today's hearing was supposed to talk about any problems parties were having involving production of documents and given they have not received any documents at all, they would hope to address it again in thirty days. Ms. McLetchie joined the request. Ms. Nichols stated no issue to the hearing, and stated Metro's position under NRS 239.005 they cannot produce any documents, until they know exactly what they can charge, we cannot inform the Petitions of what the cost is going to be. Ms. McLetchie requested Metro make certain records such as the contracts available for inspection upon request by Petitioners. COURT ORDERED, status CHECK SET; FURTHER ORDERED, Metro and Petitioners to meet and confer in good faith to identify the scope of materials that Metro has that would be responsive to the document request, and to also consider if there are initial documents that can be produced. Court advised they are not ordering metro to produce the documents over the next two weeks, however ordering parties meet and confer. Mr. Tasca stated they have been waiting thirty days for documents, and inquired why some of the documents have not been produced where there is not controversy as to which side needs to pay for the documents. Ms. Nichols argued her client has appeal rights and the Order was just entered in on March 2, and if Metro starts producing documents in essence they are waiting their appeal rights. Court directed Ms. Nichols to wait to file their appeal until after the Courts' Order on Friday. Court reiterates its original order that documents should be produced on a rolling basis.

CONTINUED TO: 3/21/18 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

March 12, 2018

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

March 12, 2018 3:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:**

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- The Judge in this Court, Department 2 (Judge Scotti), remains firmly committed to insuring that he acts with utmost impartiality and that he completely avoids any personal bias or prejudice. Nevertheless, the circumstances surrounding this case create a community perception that the Court's impartiality might reasonably be questioned. As the parties may know, the Las Vegas Review Journal has publicly and harshly criticized this Court over its discovery rulings in the related case involving the October 1 massacre, *Hartfield v. Office of the Clark County Coroner, etc.*, Case No. A-18-768781.

Rule 2.11 of the Revised Nevada Code of Judicial Conduct provides that [a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. The Las Vegas Review Journal, through its publications, has created a situation where the public reasonably might believe that a person in Judge Scotti's shoes would lack 100% impartiality.

Rule 2.11(C) allows the Court to ask the parties and their lawyers to consider, outside the presence of the judge and court staff, court officials and others subject to the judge's direction and control, whether to waive disqualification. The Court hereby makes that request. The Court DIRECTS each party to advise this Court in writing, no later than noon, Friday, March 16, 2018, whether it elects to waive or not waive disqualification. If ALL parties do not waive disqualification, then this Court shall enter an order of disqualification by Monday, March 19, 2018.

IT IS SO ORDERED.

Richard Scotti
District Judge

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve. ndo/3/12/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

March 16, 2018

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

March 16, 2018 3:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:** Chambers

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- To avoid the appearance of conflict of interest, and/or bias or prejudice, this COURT hereby disqualifies itself and ORDERS, this matter be REASSIGNED at random.

Although the Las Vegas Review Journal waived any potential conflict, Las Vegas Metropolitan Police Department did not.

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve. ndo/3/16/18

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****March 22, 2018**

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
 vs.
 Las Vegas Metropolitan Police Department, Defendant(s)

March 22, 2018 9:30 AM Status Check

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Olivia Black

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Nichols, Jacqueline	Attorney
	Shell, Alina	Attorney
	Shiroff, Justin	Attorney

JOURNAL ENTRIES

- Court noted there was a Motion for Reconsideration that needed to be set, also there was an issue with a request for a Stay. Court further noted it needed some clarification as the motion and stated its concerns regarding there being no specifics as to the expense portion. Upon Court's inquiry, Ms. Nichols advised at the previous status check there was oral argument discussing whether or not this matter required extraordinary use of personal and if so whether or not the department could charge staff time as to the actually numbers the department could charge, that was never discussed at the hearing. Upon Court's further inquiry, Ms. Nichols advised Judge Scotti did not address several issues in the petition and believed disclosure of all documents was not appropriate. Court noted its concerns for the record regarding the motion and counsel providing supplemental briefing.

Court inquired as to their being other redactions. Mr. Shiroff noted parties previously discussed at length the particulars of the redactions as to what they thought was needed and not needed to be redacted. Colloquy regarding 911 calls. Court instructed Ms. Nichols to do a supplemental with a more specific breakdown thereafter opposing counsel in their opposition would explain why it what should or should not be redacted. Ms. Nichols expressed her concerns regarding the time it took to review the matter. Court suggested the redactions could be broken up into different sections. Mr.

Shiroff noted he could provide Metro with a more focused list of which body camera footage he wished to review first.

Colloquy regarding Metro providing Plaintiff with a list. Arguments by counsel regarding the Freedom Information Act and the privilege log. Court stated it was not up to Metro or any other entity to decide what should be turned over, it was up to the Court. Following arguments by counsel, COURT ORDERED, Briefing Schedule SET as follows: Defendant's supplemental briefing due by March 30, 2018; Plaintiff's reply due by April 13, 2018; Defendant's Rely due by April 20, 2018 and hearing SET. COURT FURTHER ORDERED, Motion for Reconsideration ADVANCED and RESCHEDULED.

Arguments by counsel regarding the Stay and the Washington Post and KSNV not making a freedom of information request. COURT ORDERED, the matter STAYED until April 27, 2018; should not Metro prevail, the documents were to be turned over immediately; FURTHER ORDERED, the Washington Post and KSNV were not allowed to claim any rights to fees or cost under the rules. Ms. Nichols to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus**COURT MINUTES****April 10, 2018**

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
 vs.
 Las Vegas Metropolitan Police Department, Defendant(s)

April 10, 2018	9:30 AM	Motion For Stay	Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time
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HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	McLetchie, Margaret A.	Attorney
	Nichols, Jacqueline	Attorney
	Shiroff, Justin	Attorney

JOURNAL ENTRIES

- Court noted nothing had been resolved. Argument by Ms. Nichols regarding production of documents, believed the Department would be left no remedy and stated once released to parties, they will not be prohibited from disseminating them. Counsel then referred to the 5 day rule and argued Public Records Act. Argument by Ms. McLetchie pointing out Defendant was to supplement their Motion for Reconsideration, noted there is a stay in place until April 27, 2018 for further briefing and stated this case is different from the coroner case. Court noted the Supreme Court had been swift in their decision in Judge Scotti's case. Ms. McLetchie stated they did not want a stay in this case and noted Defendant move for a stay with the Supreme Court and believed Defendant had never overcome the presumption. Further argument by Ms. Nichols. Argument by Mr. Shiroff. Additional argument by Ms. Nichols. Court countered by stating Judge had issue an Order to release records

and believed Defendant had created it's own urgency. Disagreement by Ms. Nichols, stated they had moved swiftly and noted they had 30 days in which to file an Appeal. Court stated there appeared to be a lot of game playing, pointed out Defendant had ignored Judge Scotti's order, clarified delay was by Department not the Courts and believed party was prolonging the proceedings. Court advised it understood party had their rights, however, demanded to know what had changed. Argument by Ms. Nichols. Court agreed party had the right to either an Appeal or a reconsideration with Department chose reconsideration, noted Department now wants to change course and again inquired of what had changed. Ms. Nichols advised they had filed motion 10 days after first order. Statement by the Court noting the shooting had occurred several months prior. Argument by Ms. Nichols stating there is an on-going investigation, then a search warrant and then noted a name had been leaked of someone being investigated. Court stated its frustrations as there have been no substantive rulings by this Court as of yet, believed there to be no substance as to the objections and advised it is needing further information. Additional argument by Ms. Nichols regarding the Freedom Protection Act, which is not found similar to Nevada Public Act. Court agreed it did allow for some privileges. Argument by Ms. McLetchie stating Defendant had not met burden for the stay. COURT ORDERED, motion DENIED. Court reiterated the urgency was created by Defendant. FURTHER, costs will be held in abeyance. ADDITIONALLY, Motion for Reconsideration is DENIED WITH PREJUDICE and any future dates are VACATED. Upon Ms. McLetchie's inquiry, Court advised previous stay until April 27, 2018 is MOOT. Mr. Shiroff to prepare the Order and provide to opposing counsel for review prior to submitting to the Court for signature.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MARGARET A. MCLETHIE
701 E. BRIDGER AVE., SUITE 520
LAS VEGAS, NV 89101

DATE: April 18, 2018
CASE: A-17-764030-W
C/W A-17-764169-W

RE CASE: AMERICAN BROADCASTING COMPANIES, INC.; THE ASSOCIATED PRESS; CABLE NEWS NETWORK, INC.; CHESAPEAKE MEDIA I, LLC dba KSNV-TV; LOS ANGELES TIMES COMMUNICATIONS, LLC; THE NEW YORK TIMES COMPANY; SCRIPPS BROADCASTING HOLDINGS LLC dba KTNV-TV; WP COMPANY LLC dba THE WASHINGTON POST vs. LAS VEGAS METROPOLITAN DEPARTMENT

NOTICE OF APPEAL FILED: April 13, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order *re: Order filed March 9, 2018*

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF CROSS-APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS PURSUANT TO NEV. REV. STAT. 239.011/PETITION FOR WRIT OF MANDAMUS; NOTICE OF ENTRY OF ORDER; ORDER REGARDING PUBLIC RECORDS REQUEST; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

AMERICAN BROADCASTING COMPANIES, INC.; THE ASSOCIATED PRESS; CABLE NEWS NETWORK, INC.; CHESAPEAKE MEDIA I, LLC dba KSNV-TV; LOS ANGELES TIMES COMMUNICATIONS, LLC; THE NEW YORK TIMES COMPANY; SCRIPPS BROADCASTING HOLDINGS LLC dba KTNV-TV; WP COMPANY LLC dba THE WASHINGTON POST,

Plaintiff(s),

vs.

LAS VEGAS METROPOLITAN DEPARTMENT,

Defendant(s),

Case No: A-17-764030-W
Consolidated with A-17-764169-W
Dept No: XXIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 18 day of April 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

